IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8082 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MINOR TEJAL KETANBHAI PATEL THRO' KETANBHAI

Versus

STATE OF GUJARAT THRO' SECRETARY

Appearance:

1. Special Civil Application No. 8082 of 2004

MR PREMAL R JOSHI for Petitioner No. 1

Mr.H.D.Dave, Asst.GOVERNMENT PLEADER for Respondent No. 1-2

MRS VD NANAVATI for Respondent No. 3

NOTICE SERVED BY DS for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 19/07/2004

ORAL JUDGEMENT

Leave to delete respondent No.4.

2. Rule. Mr.Dave, Ld.AGP waives service of rule on behalf of respondent Nos 1 & 2 and Mrs.Nanavaty waives service of rule on behalf of respondent No.3. With the consent of learned advocates for parties matter is taken up for final hearing.

3. The petitioner has approached this court for appropriate writ directing the respondents to give admission to the petitioner in the first year course in Degree Engineering/Pharmacy college at Ahmedabad.

4. Upon hearing Mr.Joshi, Ld.advocate for the petitioner and Mr.Dave, Ld.AGP it appears that the questions which are involved in this petition are, more or less, the same which were considered by this court in SCA No.13266/03 which has been decided by this court as per the judgment, dated 24.9.03 copy whereof is produced at annexure "G". However, Mr.Dave, Ld.AGP voiced the grievance that as such in Gujarat State for giving admissions to Engineering or Pharmacy, the basis is marks obtained at 12th standard. He submitted that the certificate which has been produced by the petitioner at annexure "E" shows the gradation on the basis of marks obtained in 9th, 10th, 11th and 12th standard and therefore the gradation is not exclusively for 12th standard. Whereas Mr.Joshi for the petitioner submitted that as such Embassy of India at USA has certified that such gradation is equivalent to 12th standard Secondary Board Exam and on that basis the diploma has been conferred upon the petitioner. Mr.Dave submitted that as such the petitioner as per his own category may fall within Rule 5.5 Cl.C of the Rules for admission which interalia provides for accommodation in the seats remained vacant after the admission of candidates prescribed under Rule 4.

5. As such, in view of the reasons recorded by this court in its decision, dated 24.9.03 in SCA No.13266/03 it will be for the Secretary concerned to examine the matter considering all the aspects including the rules framed for the present year and to render the decision in accordance with law. Since the reasons are already recorded in the earlier decision referred to hereinabove, it may not be necessary for this court to record the reasons again, but suffice it to say that the matter will be required to be considered accordingly.

6. In view of the aforesaid observations and discussion, I am of the view that the following

directions shall meet with the ends of justice:

(i) The Secretary, Education Dept of the State Govt shall consider the merits, equivalence and eligibility of the petitioner for considering for admission to the professional courses in Engineering or Pharmacy and such exercise shall be undertaken by the Secretary himself or anyother officer whom he may find proper and the decision shall be rendered by the Secretary of Education Dept

(ii) The aforesaid exercise shall be completed within a period of 15 days from the date of receipt of writ of this court. The Secretary, Education Dept or anyother officer who is nominated or authorised by the Secretary for such purpose may preferably give hearing to the petitioner so that the petitioner or the representative may render assistance to the Secretary/such officer in deciding the equivalence, eligibility and the merit of the petitioner.

(iii) The decision which shall be rendered will be considered by the State Govt and necessary orders, if required shall be passed by the competent authority of the State Govt keeping in view the scope and ambit of Rule 23 of the Rules for admission framed by the State Govt for admission through Joint Admission Committee.

It is further made clear that while considering the matter it will also be open to the Secretary, Education Dept or the State Govt, as the case may be to provide for any special fee for the students like the petitioner in case it is decided to give admission. It is also made clear that the aforesaid direction is given on the basis that as on today even for management quota the admissions shall be governed by present rules.

7. Petition is allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent. No costs. DS permitted.

19.7.04 (JAYANT PATEL,J)